

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RASHAD PAYNE	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-4403
	:	
THE CITY OF PHILADELPHIA,	:	
ET AL.	:	

SURRICK, J.

AUGUST 3, 2005

MEMORANDUM & ORDER

Presently before the Court is Plaintiff's Motion For Leave To File A Fifth Amended Complaint (Doc. No. 29). For the following reasons, Plaintiff's Motion will be denied.

I. BACKGROUND

Plaintiff filed the initial Complaint in this matter on July 29, 2003. (Doc. No. 1.) The Complaint was filed two days after Plaintiff had been involved in an altercation with several Philadelphia police officers. The initial Complaint alleged, inter alia, that Defendants had violated Plaintiff's constitutional right "to be free from unreasonable searches and seizures, false arrest, false imprisonment, excessive force [and] malicious prosecution." (Compl. ¶ 53.) At the time of the altercation, Plaintiff was also employed as a police officer for the City of Philadelphia but was off duty. (*Id.* ¶ 2.)

On January 5, 2004, counsel stipulated that Plaintiff could amend his Complaint to add two police officer defendants. (Doc. No. 6.) The Amended Complaint was filed the same day. (Doc. No. 7.) On February 6, 2004, after an investigation by Lieutenant John Echols ("Lt.

Echols”) of the Internal Affairs Division (“IAD”), Plaintiff was formally arrested and charged with disorderly conduct and failing to disperse. The affidavit of probable cause for the Arrest Warrant was signed by Lt. Echols. The charges were the result of the July, 2003, altercation with the police. (Fourth Am. Compl. ¶ 37.)

On February 17, 2004 Plaintiff filed a Motion For Leave To File A Second Amended Complaint. (Doc. No. 9.) On March 1, 2004, we granted Plaintiff’s Motion. (Doc. No. 12.) The amendment sought to add “additional counts for First Amendment violations and Defendants’ retaliatory conduct and malicious prosecution” as a result of the subsequent arrest. (Doc. No. 9 at 4.)

On March 18, 2004, an Order was entered placing this matter in civil suspense pending resolution of the criminal proceedings. (Doc. No. 14.) In August of 2004, the Court was advised by counsel that Plaintiff had been convicted on the charge of disorderly conduct. On August 17, 2004, an Order was entered granting Plaintiff’s request to lift the stay and permitting Plaintiff to file a third amended complaint. (Doc. No. 15.) The Third Amended Complaint, filed on August 18, 2004, withdrew the false arrest claim.¹ (Doc. No. 16.) Plaintiff filed an appeal from his criminal conviction and on January 13, 2005, after a jury trial, he was found not guilty of all charges.

On January 14, 2005, Plaintiff filed a Motion For Leave To File A Fourth Amended Complaint. (Doc. No. 21.) On February 7, 2005, we granted Plaintiff’s Motion. (Doc. No. 23.)

¹In addition to withdrawing the false arrest claim, the Third Amended Complaint also withdrew Plaintiff’s state law claims for false imprisonment, malicious prosecution, intentional infliction of emotional distress, invasion of privacy, negligence, and negligent hiring, retention, and supervision. (*Compare* Second Am. Compl. ¶ 68, *with* Third Am. Compl. ¶ 68.)

The Fourth Amended Complaint reinstated Plaintiffs state law claims of false arrest and malicious prosecution. (Doc. No. 24.) On June 6, 2005, after a status conference with counsel, a Scheduling Order was entered which required all fact discovery to be completed no later than July 5, 2005, and required the parties to file dispositive motions no later than July 20, 2005. The subject of a fifth amended complaint was not raised during the conference. Trial was scheduled for September 12, 2005. (Doc. No. 25.)

On July 18, 2005, Plaintiff filed a Motion For Leave To File A Fifth Amended Complaint. (Doc. No. 26.) On July 25, 2004, after Plaintiff withdrew certain claims against three of the Defendants, Plaintiff submitted a revised Motion To Amend, which included a proposed Fifth Amended Complaint that did not contain the withdrawn claims. (Doc. No. 29.) Defendants oppose Plaintiff's attempt to file the Fifth Amended Complaint.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 15(a), "a party may amend [its] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). "The decision whether to grant or to deny a motion for leave to amend rests within the sound discretion of the district court." *Rolo v. City Investing Co. Liquidated Trust*, 155 F.3d 644, 654 (3d Cir. 1998). While the Third Circuit generally holds that leave to amend should be granted freely, the policy favoring liberal amendment of pleadings is not unbounded. *Dole v. Arco Chem. Co.*, 921 F.2d 484, 486-87 (3d Cir. 1990). Rather, "[a] district court may deny leave to amend a complaint if a plaintiff's delay in seeking amendment is undue, motivated by bad faith, or prejudicial to the opposing party." *Cureton v. Nat'l Collegiate Athletic Ass'n*, 252 F.3d 267, 272-73 (3d Cir. 2001) (citing *Forman v. Davis*, 371 U.S. 178, 182

(1962)).

III. LEGAL ANALYSIS

In his proposed Fifth Amended Complaint, Plaintiff seeks to add Lt. Echols as a defendant. (Doc. No. 29 Ex. 1 ¶ 7.) As mentioned above, Lt. Echols was the Internal Affairs investigator who reviewed the circumstances surrounding the July, 2003, altercation between Plaintiff and Defendants and the initial detention/arrest of Plaintiff. The proposed Fifth Amended Complaint alleges that “[o]n February 6, 2004, over 6 months after filing this civil rights action, Defendant Echols arrested and charged Plaintiff with disorderly conduct and failing to disperse as a result of Plaintiff’s prior arrest on July 27, 2003.” (*Id.* ¶ 37.) The Defendants, Police Officer Cropper, Sergeant Dandridge, and Police Officer Wardlaw argue that: (1) Plaintiff’s delay in seeking this amendment is undue and unexplained; (2) Plaintiff failed to add Lt. Echols when he filed his earlier amended complaints; and (3) Defendants will be prejudiced by Plaintiff’s proposed amendment. (Doc. No. 30 at 5-12.)

Although a district court may deny a plaintiff’s motion to amend a complaint if the plaintiff’s delay in seeking the amendment is undue, “[t]he mere passage of time does not require that a motion to amend a complaint be denied on grounds of delay. In fact, delay alone is an insufficient ground to deny leave to amend.” *Cureton*, 252 F.3d at 273 (internal citation omitted). In reviewing whether a plaintiff’s motion to amend should be denied because of undue delay, a district court must “‘focus on the plaintiff’s motives for not amending their complaint to assert this claim earlier.’” *Lindquist v. Buckingham Twp.*, 106 F. App’x 768, 775 (3d Cir. 2004) (quoting *Adams v. Gould, Inc.*, 739 F.2d 858, 868 (3d Cir. 1984)). The plaintiff “bears the burden of proof in explaining the reasons for delay in seeking leave to amend.” *Tarkett, Inc. v.*

Congoleum Corp., 144 F.R.D. 289, 290 (E.D. Pa. 1992).

Plaintiff argues that “the delay in naming Lieutenant Echols as a Defendant occurred because Plaintiff was required to appeal his conviction before he was able to bring his claims for First and Fourth Amendment violations when he was unlawfully arrested and maliciously prosecuted.” (Doc. No. 29 at 6.) As Defendants point out, this reason simply lacks merit. After Lt. Echols arrested Plaintiff on February 6, 2004, but before Plaintiff appealed his conviction in August, 2004, Plaintiff sought leave to file a second amended complaint. This Complaint alleged First Amendment and Fourth Amendment violations. (Doc. No. 9 Ex. B ¶ 57.) Plaintiff was aware of Lt. Echols’s participation in this matter early in the litigation. Notwithstanding this knowledge, he waited until only seven weeks before trial, after the close of discovery, and two days before the deadline for filing dispositive motions, to bring Lt. Echols into this case. Plaintiff had multiple opportunities to include Lt. Echols in this litigation and failed to do so. This failure has not been adequately explained. Plaintiff’s conduct constitutes undue delay which would require this Court to continue the trial so that Lt. Echols could answer the Complaint, conduct discovery, and file appropriate dispositive motions. *Cureton*, 252 F.3d at 273 (noting that a plaintiff’s delay “may become undue when [he] has had previous opportunities to amend a complaint”). Under the circumstances, we will not permit the amendment.

We also deny Plaintiff’s Motion because his proposed amendment would prejudice the existing Defendants. A district court may deny a motion to amend if it would result in substantial or undue prejudice to a defendant. *Cureton*, 252 F.3d at 273. In evaluating the prejudicial effect of a proposed amendment, a court must “focus on the hardship to the defendants if the amendment were permitted,” *id.*, by considering “whether allowing an

amendment would result in additional discovery, cost, and preparation to defend against new facts or new theories.” *Id.*; *see also Dev. Group, LLC v. Franklin Twp.*, Civ. A. No. 03-2936, 2004 U.S. Dist. LEXIS 15709, at *8 (E.D. Pa. Aug. 5, 2004) (denying motion to amend the complaint to add new defendants because it would cause undue prejudice to the existing defendants); *Matlin v. Barber*, Civ. A. No. 94-6819, 1996 U.S. Dist. LEXIS 1777, at *13 (E.D. Pa. Feb. 15, 1996) (same); *Ross v. Jolly*, 151 F.R.D. 562, 565 (E.D. Pa. 1993) (denying motion to amend the complaint to add new theory because it would be unduly prejudicial to defendants); *SIG Swiss Indus. Co. v. Fres-Co Sys., USA, Inc.*, Civ. A. No. 91-0699, 1993 U.S. Dist. LEXIS 8536, at *7 (E.D. Pa. June 24, 1993) (same).

In this case, the addition of Lt. Echols as a defendant would result in undue prejudice to the current Defendants. Until now, Plaintiff’s claims against Defendants Police Officer Cropper, Sergeant Dandridge, and Police Officer Wardlaw focused on their warrantless arrest of him. If Plaintiff were permitted to amend his complaint again, the case would certainly become more complicated. The focus would be broadened to encompass the circumstances surrounding Lt. Echols’s subsequent investigation and arrest of Plaintiff pursuant to a warrant. *See* Doc. No. 29 at 5, 8 (“Plaintiff has alleged that Lieutenant Echols violated his civil rights under the First and Fourth Amendments of the United States[] Constitution by arresting, prosecuting and retaliating against Plaintiff without probable cause.”). Because none of the Defendants have had an opportunity to conduct discovery or otherwise address this new theory, allowing Plaintiff to amend his Complaint at this late date would unduly prejudice these Defendants.

An appropriate Order follows.

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RASHAD PAYNE

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CIVIL ACTION

NO. 03-CV-4403

ORDER

AND NOW, this 3rd day of August, 2005, upon consideration of Plaintiff's Motion For Leave To File A Fifth Amended Complaint (Doc. No. 29, No. 03-CV-4403), and all papers filed in support thereof and in opposition thereto, it is ORDERED that Plaintiff's Motion is DENIED. Plaintiff's initial Motion For Leave To File A Fifth Amended Complaint (Doc. No. 26, No. 03-CV-4403) is DISMISSED as MOOT.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge